

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

RUTH SMITH, Individually and as Widow for the)	
Use and Benefit of Herself and the Next Kin of)	
Richard Smith, Deceased,)	
)	
Plaintiff,)	Civil No. 3:05-0444
)	Judge Aleta A. Trauger
v.)	(Dist. Of MA No.
)	1:05-cv-11515PBS)
PFIZER, INC., <i>et al.</i> ,)	
)	
Defendants.)	

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Defendants Pfizer Inc and Warner-Lambert Company LLC (collectively "Pfizer") respectfully move for summary judgment, pursuant to Rule 56 of the Federal Rules of Civil Procedure, seeking dismissal of Plaintiff's Amended Complaint in its entirety. The grounds for this motion are set forth in the accompanying memorandum of law.

Pfizer previously moved for summary judgment in the MDL court. Judge Saris ruled on various aspects of that motion, but did not reach certain issues that involved "fact-specific inquiries involving questions of Tennessee law" that were "best left for the transferor court in Tennessee to resolve." *See In re Neurontin Mktg., Sales Practices, & Prods. Liab. Litig.*, MDL No. 1629, [05-11515 Dkt. No. 10] at 2 (D. Mass. Aug. 14, 2009). For the convenience of this Court, Pfizer has revised its summary judgment motion to address the issues that Judge Saris did not reach, without burdening the Court with briefing on issues that Judge Saris has already resolved. In addition, the present motion raises one new argument based on settled Tennessee law recognizing that suicide is an independent intervening cause that breaks the chain of proximate causation in wrongful death actions. This is an issue of Tennessee law that this Court will need to address prior to any trial, and should thus be considered as part of this motion.

One of the exhibits previously filed by Pfizer in the MDL court in support of summary

judgment does not contain three of the transcript pages cited herein. (*See* Trimble Dep. [MDL 1644-3].) For the Court's convenience, a revised exhibit that includes these additional pages is attached to the accompanying December 4, 2009, Declaration of Mark Cheffo. Pfizer otherwise relies upon and incorporates herein the summary judgment record filed in the MDL court.

WHEREFORE, Defendants respectfully request that the Court grant summary judgment in their favor on all counts of Plaintiff's Amended Complaint.

REQUEST FOR ORAL ARGUMENT

Defendants believe that oral argument will assist the Court, and they wish to be heard. Accordingly, Defendants respectfully request oral argument on this motion.

Dated: December 4, 2009

Respectfully submitted,

NEAL & HARWELL, PLC

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Of counsel

CERTIFICATE OF SERVICE

I hereby certify that on this the 4^h day of December, 2009, I electronically filed the foregoing document with the Clerk of the Court, United States District Court for the Middle District of Tennessee, using the CM/ECF system. True and correct copies of the foregoing documents are being served via the Court's CM/ECF system.

/s/ Gerald D. Neenan